Ch'ng Cheng Siew (suing as administrator of estate of Wong See Yan, deceased) v Pemungut Duti Setem

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24NCVC-314–03 OF 2015
VAZEER ALAM MYDIN J
9 DECEMBER 2015

Land Law — Transfer — Memorandum of transfer — Assessment — Succession — Intestacy — Amount of stamp duty payable — Children renounced beneficial interests and vested properties under mother's name — Assessment of ad valorem duty — Whether renouncement was gift inter vivos — Stamp Act 1949 ss 4(1), 38A & 39

The plaintiff and her deceased husband were registered owners holding 1/2 shares each in two properties ('the properties'). However, the deceased died intestate and along with the plaintiff, he left two other beneficiaries, a son and a daughter ('Wong siblings'). Under s 6(1)(e) of the Distribution Act 1958, the plaintiff, WCM and WPM would each hold 1/3 share of the deceased's 1/2 interest in the properties. The Wong siblings agreed to vest the entire 1/2 share of the estate of the deceased in the properties to the plaintiff as sole beneficiary. The plaintiff obtained the requisite order under s 60 of the Probate and Administration Act 1959 from the High Court for the vesting/transfer of the estate's 1/2 in both properties to the plaintiff. The plaintiff then executed two memorandums of transfer ('MOT') to give effect to the order. The MOT was submitted to the defendant for assessment of the stamp duty payable on the instruments. The defendant apportioned the stamp duties by separate assessment on the 1/3 of the plaintiff and 2/3 portion of the Wong siblings. Each instruments amounted to RM17,710 and RM4,944, respectively. Dissatisfied, the plaintiff appealed against both assessments but the appeal was dismissed. Hence, the present appeal.

Held, allowing the appeal:

(1) There was no evidence to the effect that the Wong siblings passed on their interests in the properties by way of gift to the plaintiff. Once they had renounced their interests, they did not have any right or title in the respective 1/3 share in the properties for them to make a gift. The agreement between the plaintiff and the Wong siblings could not be construed as an inter vivos gift of the interests of the Wong siblings, as donors, to their mother, as donee. In order to make and inter vivos gift, the giver must possess the right to the property that is given. The Wong

siblings did not have any interest in the properties sufficient enough to make such a gift of such interest (see paras 24 & 27–28).

(2) The registration of transfer of the estate's 1/2 interest in the properties sought in the instruments was based on the vesting order granted. A vesting order merely vests the rights and interests of an estate onto a beneficiary (see para 29).

(3) There was no basis in law or in fact for the defendant to construe the 2/3 interest of the Wong siblings separately as being transferred to the plaintiff as a gift and for the defendant to then assess and impose ad valorem stamp duty on that basis. The term 'gift' was not used anywhere in the affidavit in support of the originating summons leading to the vesting order. The defendant ought to assess stamp duty based on Item 32(i) of the First Schedule of the Stamp Act 1949, which is the nominal RM10 (see paras 29–30).

[Bahasa Malaysia summary

Plaintif dan suaminya yang telah meninggal dunia adalah pemilik berdaftar memegang setiap seorang 1/2 saham dalam dua hartanah ('hartanah tersebut'). Walau bagaimanapun si mati meninggal dunia tak berwasiat dan bersama dengan plaintif, dia meninggalkan kepada dua benefisiari yang lain, anak lelaki dan perempuan ('adik-beradik Wong'). Di bawah s 6(1)(e) Akta Pembahagian 1958, plaintif, WCM dan WPM setiap seorang memegang 1/3 syer daripada 1/2 kepentingan si mati dalam hartanah tersebut. Adik-beradik Wong bersetuju untuk menyerahhakkan keseluruhan 1/2 syer estet si mati dalam hartanah tersebut kepada plaintif sebagai benefisiari tunggal. Plaintif memperolehi perintah yang diperlukan di bawah s 60 Akta Probet dan Pentadbiran 1959 daripada Mahkamah Tinggi kerana menyerahhakkan/memindah 1/2 estet dalam kedua-dua hartanah kepada plaintif. Plaintif kemudiannya melaksanakan dua memorandum pemindahan ('MOT') untuk menguatkuasakan perintah tersebut. MOT tersebut diserahkan kepada defendan untuk penilaian duti setem kena dibayar atas instrumen. Defendan membahagikan duti setem dengan penilaian berasingan atas 1/3 bahagian plaintif dan 2/3 bahagian adik-beradik Wong. Setiap instrumen masing-masing berjumlah sebanyak RM17,710 dan RM4,944. Tidak berpuas hati, plaintif merayu terhadap kedua-dua penilaian tetapi rayuan tersebut ditolak. Maka rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Tidak terdapat keterangan bahawa adik-beradik Wong memindahkan kepentingan mereka di dalam hartanah melalui hadiah kepada plaintif. Sebaik sahaja mereka melepaskan kepentingan mereka, mereka tidak mempunyai apa-apa hak dalam 1/3 syer masing-masing dalam hartanah untuk mereka membuat hadiah. Persetujuan antara plaintif dan

adik-beradik Wong tidak dapat ditafsir sebagai hadiah inter vivos terhadap kepentingan adik-beradik Wong, sebagai penderma, kepada ibu mereka, sebagai penerima derma. Untuk membuat hadiah inter vivos, pemberi mesti memiliki hak kepada hartanah yang diberikan. Adik-beradik Wong tidak mempunyai apa-apa kepentingan dalam hartanah yang mencukupi untuk membuat hadiah sedemikian terhadap kepentingan sedemikian (lihat perenggan 24, 27 & 28).

(2) Pendaftaran pemindahan 1/2 kepentingan estet dalam hartanah yang dipohon dalam instrumen adalah berdasarkan ke atas perintah letak hak yang diberikan. Perintah letak hak semata-mata meletakhakkan hak dan kepentingan kepada benefisiari (lihat perenggan 29).

(3) Tidak terdapat asas dari segi undang-undang atau fakta untuk defendan mentafsir 2/3 kepentingan adik-beradik Wong secara berasingan kerana dipindahkan kepada plaintif sebagai hadiah dan untuk defendan menilai dan mengenakan duti setem ad valorem atas dasar tersebut. Terma 'gift' tidak digunakan di mana-mana di dalam afidavit menyokong saman pemula yang membawa kepada perintah letak hak tersebut. Defendan patut menilai duti setem berdasarkan Item 32(i) Jadual Pertama Akta Setem 1949, yang mana adalah nominal RM10 (lihat perenggan 29–30).]

Notes

For cases on transfer in general, see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 5666–5760.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188; [1997] 4 CLJ 393, FC (refd)

Hor Lim Chee v Pemungut Duti Setem (Originating Summons No 24NCVC-1347–12 of 2013) (unreported), HC (refd)

Kumarappa Chettiar son of Raman Chettiar of Klang v The Federated Malay States [1938] 1 MLJ 9 (refd)

Kwan Teck Meng & Ors v Liew Sam Lee [1963] 1 MLJ 333 (refd)

Townson v Tickell (1819) 3 B & ALD 31 (refd)

In re Scott, decd [1975] 1 WLR 1260, ChD (refd)

Legislation referred to

Distribution Act 1958 ss 4(2), 6(1), 6(1)(e)

National Land Code Form 14A

Probate and Administration Act 1959 s 60

Stamp Act 1949 ss 4(1), 16(1), 38A, 39, First Schedule, Item 32(i), Item 66(c)

Phua Jin Key (CM Chiu & Co) for the plaintiff.
Ridzuan bin Othman (Lembaga Hasil Dalam Negeri Selangor) for the defendant.

Vazeer Alam Mydin J:

[1] This is a case stated from the Collector of Stamp Duty, pursuant to s 39 of the Stamp Act 1949 (Act 378).

[2] The opinion of the court was sought as to the amount of stamp duty payable on two memorandum of transfer (Form 14A) both dated 23 January 2015 in respect of the transfer of:

(a) 1/2 interest in land known as, PT No 11773, Mukim Sungai Buloh, Daerah Petaling, Selangor, and held under Issue Document of Title No HS(M) 7247 together with a factory building erected thereon bearing postal address No 14, Mayang Industrial Park, Petaling Jaya, Selangor Darul Ehsan ('the first property'); and

(b) 1/2 interest in land known as, PT No 2066, Mukim and Daerah Petaling, Selangor, and held under Issue Document of Title No HS(M) 13661 together with a factory building erected thereon bearing postal address No 14, Jalan MJ 5, Medan Jaya, Petaling Jaya, Selangor Darul Ehsan ('the second property').

The first property and second property are collectively referred to as 'the properties'.

[3] The transferor in both transfers of the properties is the plaintiff, as administrator of the estate of Wong See Yan, deceased, to Ch'ng Cheng Siew in person as beneficiary of the estate.

[4] The facts as in the case stated are as follows. The deceased, Wong See Yan, died intestate on 12 March 2011, leaving behind three lawful beneficiaries, namely:

(a)	Ch'ng Cheng Siew	–	wife
(b)	Wong Choon Meng	–	son
(c)	Wong Phooi Meng	–	daughter

[5] Letters of administration were granted to the plaintiff on 30 September 2011.

[6] The registered owners of both properties are:

(a)	Ch'ng Cheng Siew	–	1/2 share
(b)	Wong See Yan	–	1/2 share

[7] In intestacy, the right of succession is determined by statute. Pursuant to s 6(1)(e) of the Distribution Act 1958 (Act 300), the estate's 1/2 share interest in both properties would have be distributed in the following manner:

(a)	Ch'ng Cheng Siew	–	wife	–	1/3
(b)	Wong Choon Meng	–	son	–	1/3
(c)	Wong Phooi Meng	–	daughter	–	1/3

[8] However, two of the beneficiaries namely, Wong Choon Meng and Wong Phooi Meng, decided to renounce and forego their beneficial interest in both properties and agreed that the entire 1/2 share of the estate of Wong See Yan, deceased, in both properties be vested in the name of their mother, Ch'ng Cheng Siew, as sole beneficiary.

[9] Then, the plaintiff vide Originating Summons No 24NCVC-1610–10 of 2014 applied to the High Court for the requisite order under s 60 of the Probate and Administration Act 1959 (Act 97) for the vesting/transfer of the estate's 1/2 in both properties to the plaintiff. In the affidavit in support of that application, the plaintiff avers that:

> Secara bermuafakat, saya bersama anak-anak saya yang juga merupakan benefisiari-benefisiari bersetuju hartanah-hartanah tersebut diturunmilik/dipindahmilik kepada saya.

[10] The High Court in sanctioning that application, on 7 November 2014 granted order in the following terms:

> ATAS PERMOHONAN Pemohon yang dinamakan di atas DAN SETELAH MEMBACA Saman Pemula Ex-Parte bertarikh 31 Oktober 2014 Afidavit Sokongan Ch'ng Cheng Siew yang diikrar pada 20 Oktober 2014, Afidavit Wong Choon Meng yang diikrar pada 20 Oktober 2014 dan Afidavit Wong Phooi Mengyang diikrar pada 20 Oktober 2014 dan kesemuanya difailkan di sini DAN SETELAH MENDENGAR Phua Jin Key peguam bagi pihak Pemohon MAKA DALAH DIPERINTAHKAN bahawa:
>
> (a) Pemohon yang merupakan Pentadbir bagi Harta Pusaka Wong See Yan simati menurut Geran surat kuasa mentadbir yang diisukan oleh Mahkamah Tinggi Kuala Lumpur pada 30-9-2011 *dibenarkan untuk menurunkan milik* berikut:
>
> (i) 1/2 bahagian dalam sebuah kilang yang dipegang di bawah hakmilik

H.S.(M) 13661, PT 2066, Mukim dan Daerah Petaling, Selangor, beralamat di 14, Jalan MJ 5, Medan Maju Jaya, Petaling Jaya;

(ii) 1/2 bahagian dalam sebuah kilang yang dipegang di bawah hakmilik HS(M) 7247, PT 11773, Mukim Sungai Buloh, Daerah Petaling, Selangor, beralamat di 14, Mayang Industrial Park, Petaling Jaya; dan

(iii) 1/2 bahagian dalam sebuah rumah dua tingkat semi-detached yang dipegang di bawah hakmilik Geran 106966, Lot 771 (dahulu dikenali sebagai HS(D) 11834, Lot 771) Mukim 17, Daerah Timur Laut, Pulau Pinang dan hakmilik Geran Mukim 181, Lot 739, Mukim 17, Daerah Timur Laut, Pulau Pinang beralamat 20, Jalan Sungai Emas 5B, Batu Feringgi, Pulau Pinang (selepas ini disebut 'Hartanah-hartanah tersebut')

Kepada Ch'ng Cheng Siew (No. KP: 480730-07-5158) sebagai Benefisiari (selepas ini disebut 'Benefisiari tersebut').

(b) Pendaftar Hakmilik Shah Alam dan/atau Pentadbir Tanah Daerah Petaling, Selangor dan/atau Pentadbir Tanah Daerah Timur Laut, Pulau Pinang diarahkan merekodkan perintah ini dan seterusnya melakukan segala apa benda sepertimana yang perlu untuk menurunkan milik/memindahkan dan mendaftarkan Hartanah-hartanah tersebut kepada Benefisiari tersebut; dan

(c) Kos permohonan ini dan juga kos urusan turunmilik/pindahmilik hendaklah dibayar oleh Benefisiari tersebut.

(Emphasis added.)

[11] That order was in effect a vesting order to vest the estate's entire 1/2 share interest in the properties unto Ch'ng Cheng Siew. To give effect to the aforesaid order, the plaintiff, as administrator, executed two memorandum of transfer ('MOT') to transfer and vest the estate's 1/2 interest in the first and second property in the name of Ch'ng Cheng Siew, as beneficiary. Both the MOT were then submitted to the defendant for assessment of the stamp duty payable on the instruments. The defendant assessed the stamp duty payable as follows:

First Property			
(i)	1/3 share of Ch'ng Cheng Siew (Assessed based on Item 32(1) of the First Schedule of the Stamp Act – ie nominal)	–	RM10
(ii)	2/3 share of Wong Choon Meng and Wong Phooi Meng (Assessed based on Item 66(c) of the First Schedule of the Stamp Act – ie ad valorem)	–	RM17,700
	Total	–	RM17,710

	Second Property		
(i)	1/3 share of Ch'ng Cheng Siew (Assessed based on Item 32(1) of the First Schedule of the Stamp Act – i.e. nominal)	–	RM10
(ii)	2/3 share of Wong Choon Meng and Wong Phooi Meng (Assessed based on Item 66(c) of the First Schedule of the Stamp Act – i.e. ad valorem)	–	RM4,934
	Total	–	RM4,944

[12] Following the assessment, the defendant issued two separate notice of assessment for each of the instruments. The plaintiff being dissatisfied appealed against both assessments by lodgment of the requisite notice of objection under s 38A of the Stamp Act 1949. The defendant reviewed the assessment and rejected the appeal. The plaintiff being dissatisfied with the decision gave notice of intention to appeal to the High Court in accordance to s 39 of the Stamp Act 1949, that reads:

> (1) Any person who is dissatisfied with the decision of the Collector under subsection 38A(5) may, within twenty-one days after the person is notified in writing of that decision and upon payment of duty in conformity therewith, appeal against the decision to the High Court by filing a notice of appeal with the High Court and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required, and the decision made by him.

[13] The plaintiff paid the duty assessed in full on both instruments of transfer and the defendant in compliance to s 39 of the Stamp Act 1949, has filed this case stated for the following question to be answered by the court:

> What is the amount of stamp duty that ought to be assessed and paid by the plaintiff on both the Memorandum of Transfer (Form 14A) dated 23.1.2015?

[14] The defendant submits that the distribution of an intestate non-Muslim estate, such as in this case, is to be done in accordance to the Distribution Act 1958. In this regard, s 4(2) of the Distribution Act 1958 provides:

> The distribution of the immovable property of a person deceased intestate shall be regulated by this Act wherever he may have been domiciled at the time of his death.

As the deceased is survived by his wife and two children, each of them would be entitled to 1/3 share in accordance to s 6(1) of the Distribution Act 1958, that provides:

> (1) After the commencement of this Act, if any person shall die intestate as to any

property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trusts mentioned in this section, namely–

...

(e) if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;

...

And that is the manner in which the estate of the deceased is to be distributed.

[15] Now, in respect of the assessment and payment of stamp duty, regard would have to be had to s 4(1) of the Stamp Act 1949, that provides:

(1) Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several *instruments specified in the First Schedule shall,* from and after the commencement of this Act, *be chargeable with the several duties specified in such Schedule.* (Emphasis added.)

[16] The defendant states that if the transfer and vesting of the beneficiary's respective 1/3 interest is done by the administrator in accordance to the Distribution Act 1958, and the interest is transferred onto the name of the beneficiaries, then the stamp duty payable on the memorandum of transfer is RM10 as provided in Item 32(i) of the First Schedule to the Stamp Act 1949, which reads as follows:

32 CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:

(i) Of any kind not otherwise specially charged with duty – RM10.00

[17] However, in respect of the 2/3 interest of the other two beneficiaries, which had devolved onto Ch'ng Cheng Siew following the renunciation of their rights of inheritance and the court order of 7 November 2014, the defendant contends that stamp duty payable would be assessed in accordance to Item 66(c) of the First Schedule that reads:

66 RELEASE OR RENUNCIATION that is to say, any instrument whereby a person releases any property:

(a) If on sale - The same duty as a conveyance on sale.

(b) If by way of security - The same duty as a charge or mortgage.

(c) *If by way of gift - The same duty as a conveyance by way of gift.*

(d) In any other case not otherwise specially charged with duty – RM10.00 (Emphasis added.)

And s 16(1) of the Stamp Act 1949 reads:

> Any conveyance or transfer operating as a voluntary disposition inter vivos shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale.

[18] Thus, the defendant has considered the renunciation by Wong Choon Meng and Wong Phooi Meng of their respective interest in the properties, and its consequent devolution to Ch'ng Cheng Siew, as a gift inter vivos and has charged ad valorem stamp duty as if it were a conveyance by way of gift under Item 66(c) of the First Schedule to the Stamp Act 1949.

[19] Learned counsel for the defendant submits that though there is no definition of the terms 'renunciation' or 'release' in the Stamp Act 1949, a reference to the *Shorter Oxford English Dictionary* shows the term 'renunciation' to be defined as the 'action of renouncing, giving up or surrendering (a possession, right, title, etc)'. Whilst, *Black's Law Dictionary* defines the word 'release' as 'the act of conveying an estate or right to another'. Therefore, based on these definitions, learned counsel for the defendant argues that when Wong Choon Meng and Wong Phooi Meng agreed renounce their respective rights and have the entire 1/2 share of the estate in the properties transferred to Ch'ng Cheng Siew, that amounted to a gift inter vivos. Learned counsel for the defendant has also referred to the unreported High Court judgment in *Hor Lim Chee v Pemungut Duti Setem* (Originating Summons No 24NCVC-1347–12 of 2013) in support of this contention. In that case there was a deed of family arrangement ('DFA') wherein all the beneficiaries except the plaintiff therein had in consideration of love and affection renounced their inheritance to the deceased's estate resulting in the plaintiff therein becoming the sole beneficiary of the estate. The administrator in that case proceeded to transfer certain immovable properties of the estate to the plaintiff therein as sole beneficiary. The collector of stamp duty had assessed stamp duty payable on the memorandum of transfer on the same basis as in the present case. The learned judicial commissioner had held that the renunciation of beneficial interest in consideration of love and affection as provided in the FDA would constitute a conveyance by way of gift and that the Collector of Stamp Duty was correct in assessing ad valorem duty on the portion that was released and renounced by the other beneficiaries.

[20] The plaintiff, however, argues that the renunciation of interest by Wong Choon Meng and Wong Phooi Meng in the present case is not a gift inter vivos and that the defendant was wrong in apportioning the stamp duty by separate assessment on the 1/3 portion of Ch'ng Cheng Siew (nominal RM10) and the

2/3 portion of Wong Choon Meng and Wong Phooi Meng (ad valorem). Learned counsel submits that the facts of the case shows that it renunciation of interest by the Wong siblings is not a gift but merely a devolution of interest by operation of law.

[21] I had decided in favour of the plaintiff for the following reasons. Firstly, learned counsel for the plaintiff refers to the case of *Townson v Tickell* (1819) 3 B & ALD 31, where Abbott CJ held:

> *The law certainly is not so absurd as to force a man to take an estate against his will* ... I concur in that opinion, and think that the renunciation here having been by deed under the hand and seal of the party, must have the effect of making the devise with respect to him null and void ... The good sense of the thing is quite the other way; the indeed presumes, that the estate devised will be beneficial to the devisee, and that he will accept of it, until there is proof to the contrary. *Here is a renunciation by a most solemn act, viz by deed; and by that he has said, that he did not chose to accept that which is devised to him. It seems to me, that the effect of that is, that the estate never was with him at all.* (Emphasis added.)

And Holroyd J added:

> *I think that an estate cannot be forced on a man.* A device, however, being prima facie for the devisee's benefit, he is supposed to assent to it, until he does some act to shew his dissent. *The law presumes that he will assent until the contrary be proved; when the contrary, however, is proved, it shews that he never did assent to the devise, and consequently, that the estate never was with him.* (Emphasis added.)

And Best J said:

> *It seems to be contrary to common sense to say, that an estate should vest in a man not assenting to it: there must be the assent of the party, before an interest in the property can pass to him.* It is stated in the declaration, that this party has, by his solemn deed, expressed his dissent, and renounced the estate devised by the will. *It appears to me, therefore, that no interest ever vested in him; and, therefore, there is nothing more to be done for the purpose of giving the sole property to the plaintiff.* (Emphasis added.)

[22] I must say that though that authority is two centuries old, the law remains the same. In the more recent English case of *In re Scott, decd* [1975] 1 WLR 1260, Walton J, in construing a similar question said at p 1271:

> I approach the matter this way. *Disclaimer is a refusal to accept an interest.* As the old Year Books had it, nobody can put an estate upon another in spite of his teeth, and here Col Scott and Miss Scott have shown their teeth by executing the deeds of disclaimer. Now, what effect does that have? It seems to me that it leaves the executor of the will still holding the interest attempted to be disposed of under the statute, and still holding it as part of the estate of the deceased. *If somebody refuses to accept a slice of the estate of the deceased, then it still remains, in my judgment, a part of*

the estate of the deceased. (Emphasis added.)

[23] The Australian common law position is similar to the English position as is stated in the *Principles of Australian Succession Law* (2007) Lexis Nexis Butterworths Australia at p 195 as follows:

> *A beneficiary under a will, or indeed, under intestacy, cannot be forced to accept the benefit, but may disclaim it.* ... A disclaimer does not amount to a disposition of the property (it is treated as never having been acquired by the disclaiming party) it may be made by deed, in writing and by conduct ... *In the case of intestacy, if a person entitled on intestacy disclaims the benefit, that benefit will pass to the other members of the class to which the disclaiming beneficiary belonged, and if there are none, then to the next class entitled.* (Emphasis added.)

[24] Thus, it is trite law that a beneficiary to an estate, whether under a will or intestacy, cannot be forced to take or accept his inheritance. And when such a beneficiary renounces his rights or interest, then that benefit will pass by operation of law to the other beneficiaries entitled thereto. Therefore, once Wong Choon Meng and Wong Phooi Meng renounced their interest, it would by operation of law flow to the remaining beneficiary, ie their mother Ch'ng Cheng Siew. There is no evidence to the effect that the Wong siblings passed on their interest in the properties by way of gift to their mother. Once they had renounced their interest, they did not have any right or title in their respective 1/3 share in the properties for them to make a gift.

[25] In *Words, Phrases and Maxims Legally & Judicially Defined*, Vol 8, at p 87, the term 'gift' is defined as the 'act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without any consideration'. Further In *Kumarappa Chettiar son of Raman Chettiar of Klang v The Federated Malay States* [1938] 1 MLJ 9 at p 12, Thomas CJ in construing the meaning of the term 'gift inter vivos' held as follows:

> A gift inter vivos is defined in 15 Hailsham, p 692 S. 1210 as the transfer of any property from one person to another gratuitously. It is an act whereby anything is voluntarily transferred from the true possessor to another person, with full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver.

[26] Therefore, in order to make an inter vivos gift, the giver must possess the right to the property that is given. The Federal Court in *Chor Phaik Har v Farlim properties Sdn Bhd* [1997] 3 MLJ 188; [1997] 4 CLJ 393, held that:

> ... in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete

and distribution made according to the law of distribution of the intestate estate.

And in that case the Federal Court held that it was clear that at the date of the execution of the sale agreements for the conveyance of beneficial interest in the subject property, the administration of the estate of the deceased had not been completed. It followed that until his estate had been fully administered by the administrators and distribution made according to law, the beneficiaries had no interest or property in the estate of the deceased so as to give them any title to the lands. Therefore, the beneficiaries could not have covenanted to convey any title to the respondents.

[27] Likewise, in the present case, when the two beneficiaries renounced their interest, the administration of the estate was incomplete and distribution had not been made in accordance to the law of distribution of an intestate estate. Therefore, the Wong siblings did not have any interest in the properties sufficient enough to make a gift of such interest. As pointed out their renunciation of interest would lead to their interest devolving to the remaining beneficiaries by operation of law. Here, there is the averment by the plaintiff that she and her two children had agreed that following the renunciation their interest the estate's 1/2 interest in the properties would vest with her as sole beneficiary.

[28] Based on the legal principles enunciated above, I find that this agreement between Ch'ng Cheng Siew and her two children cannot be construed as an inter vivos gift of the interest of the Wong siblings, as donors, to their mother, as donee. In this regard, for the aforesaid reasons, I am with respect unable to agree with my learned brother's decision in *Hor Lim Chee v Pemungut Duti Setem*. In that case there is also a distinguishing feature, in that, the renunciation was in consideration of love and affection and my learned brother had placed reliance on the case of *Kwan Teck Meng & Ors v Liew Sam Lee* [1963] 1 MLJ 333. But there is no such consideration found here.

[29] When the defendant assesses stamp duty payable on any instrument; he must have regard to the instrument itself, in order to construe the nature of the instrument. Here, that instrument would be the two memorandum of transfer. And in these two documents, the consideration for the transfer is stated as:

> Dalam perkara Geran Surat Kuasa Mentadbir bagi Harta Pusaka WONG SEE YAN, simati melalui Saman Pemula S-31NCVC-386-2011 bertarikh 30.9.2011 dan Perintah Mahkamah melalui Saman Pemula No. 24NCVC-16010-10/2014 bertarikh 7.11.2014.

It is therefore clear that the registration of transfer of the estate's 1/2 interest in

the properties sought in the two instruments is based on the vesting order granted by the High Court on 7 November 2014. A vesting order merely vests the rights and interest of an estate onto a beneficiary. Here, the instrument states that the entire 1/2 share of the estate in the properties is to be vested in the name of Ch'ng Cheng Siew as sole beneficiary. The term 'gift' is not used anywhere in the affidavit in support of the originating summons leading to the vesting order. Thus, I find that there is no basis in law or in fact for the defendant to construe the 2/3 interest of the Wong siblings separately as being transferred to Ch'ng Cheng Siew as a gift and for the defendant to then assess and impose ad valorem stamp duty on that basis.

[30] Therefore, my answer to the question in the case stated is that the defendant ought to assess stamp duty on the entire 1/2 share of the estate that is being transferred to Ch'ng Cheng Siew based on Item 32(i) of the First Schedule to the Stamp Act 1949, wherein the stamp duty payable is the nominal RM10. The excess stamp duty paid shall be refunded to the plaintiff.

[31] There shall be no order as to cost.

Appeal allowed.

Reported by Afiq Mohamad